Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. 90-89

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

INTERNATIONAL PRIMATE PROTECTION LEAGUE AND ITS MEMBERS, ET AL.,
Petitioners

V.

ADMINISTRATORS OF TULANE EDUCATIONAL FUND, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND IN OPPOSITION

GREGORY C. WEISS
BLUE, WILLIAMS & BUCKLEY
BAR NO. 14488
3421 N. Causeway Boulevard
Ninth Floor
Metairie, LA 70002
Telephone: (504) 831-4091
Attorney for the Administrators
of the Tulane Educational Fund

Pel Hughes Printing, Inc., 134 Carondelet St., New Orleans, LA (504) 523-2618

QUESTIONS PRESENTED

1 Whether petitioners' suit to enjoin research activities related to privately owned laboratory animals was properly dismissed for lack of standing.

2. Whether federal agencies may remove cases pursuant to 28 U.S.C. 1442(a) (1).

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The respondent, Administrators of the Tulane Educational Fund, has reviewed the law and arguments contained in the brief for the National Institutes of Health (NIH) in opposition to petitioners' petition for a writ of certiorari of the opinion of the court of appeals. Having reviewed NIH's brief in opposition, respondent, Administrators of the Tulane Educational Fund, hereby adopt and incorporate herein by reference the statement,

law and arguments made by NIH as if they were its own, except that it disagrees with NIH's position that there is a conflict between the circuits as to whether NIH was entitled to remove this case to federal court under 28 U.S.C. 1442(a) (1).[1]

With respect to the issue of whether The National Institutes of Health was entitled to remove this case to federal court, the respondent adopts and incorporates herein by reference the law and arguments made in the opposition brief filed by The Institutes for Behavior Resources, Inc. (IBR). We, like IBR, embrace the position that the Third Circuit's decision in Lovel Mfg., Div. of Patterson-Erie Corp. v. Export-Import Bank of United States, 834 F.2d 725, 733 (1988), is not in conflict with other circuits, but rather, that "the purpose of 1441 removal is to protect federal officials from unfriendly state forums... for conduct performed under color of federal office..." Thus, we embrace IBR's position that removal under 1442(a) (1) is proper where injunctive relief is specifically sought against officers of a federal agency. Clearly, the relief sought by petitioners was to enjoin NIH officials from participating in the euthanasia protocol of the Silver Spring Monkeys at Tulane's Delta Primate Reserach Center.

As to the principal issue of whether petitioners have standing to enjoin research activities related to privately owned animals, the interests of the Administrators of the Tulane Educational

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[1] See brief for The National Institutes of Health in Opposition at pg. 11, para. 2.

Fund are so closely linked to those of NIH, that we adopt and incorporate by reference all other arguments made by NIH.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

By: _____

Gregory C. Weiss (No. 14488)
BLUE, WILLIAMS & BUCKLEY
3421 N. Causeway Blvd., Ninth Floor
Metairie, Louisiana 70002
Telephone: (504) 831-4091
Attorney for Administrators of the
Tulane Educational Fund

CERTIFICATE OF SERVICE

I hereby certify that three copies of the above and foregoing have been forwarded to all counsel of record by depositing same in the U.S. mail, postage prepaid and properly addressed this 30th day of October, 1990.

_____
GREGORY C. WEISS